

**TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE**



**FISCAL NOTE**

**SB 499 - HB 638**

March 11, 2009

**SUMMARY OF BILL:** Broadens the definition of “child” to include a viable fetus as a potential victim for purposes of determining the offenses of child abuse, child neglect or endangerment, aggravated child abuse, and aggravated child neglect or endangerment.

**ESTIMATED FISCAL IMPACT:**

**Increase State Expenditures - \$14,468,600/Incarceration\***

Assumptions:

- Currently, it is an aggravated child abuse and aggravated child neglect or endangerment offense if a controlled substance is used to accomplish the act of abuse, neglect or endangerment. This bill will make it a Class A felony offense for a person, while pregnant, to knowingly use a controlled substance and cause abuse, neglect or endangerment to a viable fetus.
- In FY07-08, the Department of Children’s Services had 568 confirmed cases of drug-exposed infants. The Department of Correction (DOC) estimates that 25% (142) of these will result in convictions as a result of the child testing positive at birth. Population growth would result in 15 additional offenders in the tenth year.
- According to DOC, the average post-conviction time served for a Class C felony is 3.59 years and 2.43 years for a Class D felony. The cost per offender at 3.59 years is \$78,426.50 (\$59.80 x 1,311.48 days). The cost per offender at 2.43 years is \$52,995.96 (\$59.80 x 886.22 days). According to DOC, 42 percent of offenders will re-offend within three years of their release.
- A recidivism discount of 42 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (157 offenders x 42% recidivism discount = 66 offenders). The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 91 (157 – 66) offenders.

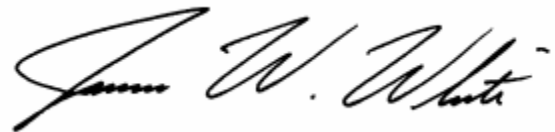
**SB 499 - HB 638**

- DOC estimates 25 percent (23) of these persons will be convicted of a Class A felony for aggravated child abuse and aggravated child neglect or endangerment while pregnant and would serve 85 percent of the sentence imposed by the court. Twenty-three will be elevated from a Class C felony to a Class A felony at 85 percent and will serve an additional 13.41 years (an increase from 3.59 years to 17.0 years). The cost per inmate at 17 years is \$371,313.15 (\$59.80 x 6,209.25 days). The cost per inmate in the tenth year is \$218,419.50 (\$59.80 x 3,652.50 days). The additional cost of increasing the average sentence length from 3.59 years to 17.0 years is \$139,993 (\$218,419.50 - \$78,426.50). The total additional operating cost for 23 offenders in the tenth year is \$3,219,839 (\$139,993 x 23).
- The remaining 75 percent (68) will be elevated from a Class D felony to a Class A felony at 85 percent and will serve an additional 14.57 years (an increase from 2.43 years to 17.0 years). The cost per inmate at 17 years is \$371,313.15 (\$59.80 x 6,209.25 days). The cost per inmate in the tenth year is \$218,419.50 (\$59.80 x 3,652.50 days). The additional cost for increasing the average sentence length from 2.43 years to 17.0 years is \$165,423.54 (\$218,419.50 - \$52,995.96). The total additional operating cost for 68 offenders is \$11,248,800.72 (\$165,423.54 x 68).

*\*Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

## **CERTIFICATION:**

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.



James W. White, Executive Director

/lsc